



Legislative Update

Covering Criminal Justice Legal Issues

Department of Public Advocacy

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DPA Opens Columbia Office

On July 14, 1999, the Department held a grand opening ceremony for its newest office in Columbia, Kentucky which will serve a nine-county area of the state. Over 60 people gathered to celebrate the opening of this office. Great support was received from local court personnel, local dignitaries, and local business people.

The opening of this new office brings the Department of Public Advocacy to a total of 24 full-time offices throughout the state. The office is staffed by **Teresa Whitaker**, Directing Attorney; **Glenda Edwards**, attorney; **Jim Maples**, attorney; and **Shanda West**, attorney. **Sharon Bloyd** is the office's legal secretary.

Ronal B. McCloud, Secretary of the Public Protection and Regulation Cabinet spoke at the opening of the new office, "This Administration is proud to formally recognize the opening of the Columbia Office which represents a significant step in our goal of delivering services through full-time offices across the Commonwealth. We appreciate the good work local public defenders have been doing and we appreciate the support we have received from judges, prosecutors, and other parts of the criminal justice system in the opening of this office".

Also speaking at the opening ceremonies was, **Public Advocate Ernie Lewis**. "The opening of the Columbia office will provide the right to counsel to those without the ability to employ their own legal representative in the counties of Adair, Casey, Clinton, Cumberland, Green, Marion, Monroe, Taylor and Washington," he said.

Senator David L. Williams, a member of the Blue Ribbon Group on Improving Indigent Defense in the 21st Century observed: "The right to counsel distinguishes us as a country that values reliable fact-finding and decision-making through an adversary system that only works if we have equal advocates on both sides of the criminal dispute. Since the 1972 General Assembly passed House Bill 461 to create Kentucky's statewide public defender program, our state has enjoyed a statewide system of delivering the right-to-counsel for those without the ability to employ their own legal representative."

In addition to celebrating the opening of the new Columbia office, contract attorneys **Donald Thomas**, **Jesse Stockton**, **Shelley Miller** and **John Alexander** were honored for their many years of service to the county's defender program.

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The 12 Recommendations of the Blue Ribbon Group

The Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21st Century consists of more than 20 distinguished members representing all three branches of government, the bar and key officials of criminal justice agencies across the state (the membership of the group appears on the back page of this newsletter).

AS PART OF THEIR FINAL REPORT, THE BLUE RIBBON GROUP SUBMITTED THE FOLLOWING 12 RECOMMENDATIONS:

- #1 – Indigent Defense is a Necessary Function of Government, and an Essential and Co-Equal Partner in the Criminal Justice System.
 - #2 – The Kentucky Public Defender System Cannot Play its Necessary Role for Courts, Clients, and the Public in this Criminal Justice System Without a Significant Increase in Funding.
 - #3 – The Full-Time System should be completed.
 - #4 – Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.
 - #5 – Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders.
 - #6 – Full-Time Trial Staff Should Be Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.
 - #7 – The Department of Public Advocacy and the Court of Justice Must Increase their Efforts to Collect Reasonable Fees from Public Defender Clients, Including Considering the Use of Private Collection Organizations.
 - #8 – Prosecutor and Defender Increases Should be Considered when a Judicial Position is Added.
 - #9 – It is Important that Public Defender Counsel be Available to Children in Juvenile Court Proceedings.
 - #10 – It is Imperative that Kentucky Reasonably Fund Indigent Capital Defense both at the Trial and Post-Trial Levels.
 - #11 – Public Defender Services are Constitutionally Mandated while Resources are Scarce. It is Important for all Eligible Persons who want to be Represented by a Lawyer, but only those who are Eligible to be Appointed a Public Defender. The Court of Justice, and Especially AOC and DPA are Encouraged to Work Cooperatively to Ensure Appropriate Public Defender Appointments.
 - #12 – The \$11.7 Million Additional Funding for Each of the 2 Years Is Reasonable and Necessary to Meet DPA's Documented Funding Needs as Described in PD21.
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Blue Ribbon Group Recommends Higher Salaries

Kentucky is one of the lowest funded public defender systems in the country utilizing the two recognized benchmarks, cost-per-case, and cost-per-capita. One of the primary reasons for this is that Kentucky pays some of the poorest salaries among the 50 states to their public defenders.

Starting Salaries are \$23,388 Per Year

Kentucky public defenders start at \$23,388 per year. Salaries in Louisville and Lexington improved as a result of General Assembly action in 1998, but only to \$23,000. The average entry level salary for public defenders in the 23 states studied by the BRG's consultant, the Spangenberg Group, was \$32,396, almost \$10,000 less than Kentucky's entry level salary.

If we do not adequately support criminal defense for poor Americans, people will think that you only get justice if you can afford to pay a lawyer. This perception would undermine confidence in our system. Skimping on an adequate representation also hurts effective law enforcement by creating delays and leading to reversal of convictions on appeal.

Janet Reno, Attorney General

Law Day, 1999

Salaries for Experienced Defenders Are Far Too Low

Salaries do not improve for experienced defenders. In 41.67% of the comparison jurisdictions, public defenders with five years of experience average over \$50,000 per year. In 50%, they earn over \$60,000. In only one state, Kansas, do they earn less than the \$38,012 paid in Kentucky.

Directing Attorneys who run multi-county public defender offices in Kentucky earn \$36,984. This position is comparable to the full-time Commonwealth's Attorney, who earns \$81,000+ per year. Supervising public defender attorneys in the comparison jurisdictions earn \$15,900 more than directing attorneys in Kentucky.

Kentucky Public Defenders Have Big Student Loans

As if the low starting salaries were not enough, 35 of Kentucky public defenders have average student loans of \$39,000.

Recruiting and Retention Are Difficult

The combination of low salaries and high student loans make the recruiting of attorneys very difficult. Further, because experienced attorneys are not compensated similarly to either prosecutors or public defenders in other jurisdictions, retaining experienced attorneys is also problematic. Turnover among DPA attorneys over the past 6 years has averaged 12%. In Louisville in 1998, 27% of defenders left. Lexington suffered a 53% turnover rate that same year.

The Blue Ribbon Group Endorses Higher Salaries

This information caused the Blue Ribbon Group to make the following findings and recommendations:

Finding #6: The Department of Public Advocacy Ranks At, or Near, the Bottom of Public Defender Salaries Nationwide for Attorneys at All Experience Levels

Recommendation #4: Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

Recommendation #5: Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders.

\$11.7 Million Additional General Fund Dollars is Reasonable

Ernie Lewis,
Public Advocate

Kentucky has had one of the lowest funded public defender systems in the nation for many years. But \$11.7 million additional General Fund dollars? A 50%+ increase? Are we nuts?

While at first blush, an \$11.7 million additional General Fund increase appears to be excessive, the Blue Ribbon Group on Improving Indigent Defense in the 21st Century found this sum to be "reasonable and necessary to meet DPA's documented funding needs as described in PD21." (Recommendation #12).

The wisdom of this recommendation can be seen readily by examining where an \$11.7 increase would place the Kentucky public defender system in comparison to other states.

\$11.7 Million Would Place Kentucky in the Middle of the Nation

An \$11.7 million increase in General Fund Dollars would place the Kentucky public defender system in the middle when compared with other public defender systems. This can be seen by examining the two benchmarks:

- It would elevate Kentucky from \$187 cost-per-case to \$303 cost-per-case. In comparison, Kansas paid \$550 per case in 1998; Wisconsin paid \$532; Iowa paid \$472; Colorado paid \$420; North Carolina paid \$380; Missouri paid \$325; Oklahoma paid \$324; Minnesota paid \$243; Tennessee paid \$235. Even if those states stayed the same from 1998 until the increases were effective, which will not occur, the increase would merely place the Kentucky public defender system in the middle of these comparison states.
- It would elevate Kentucky from \$4.90 cost-per-capita in 1998 to \$7.91. In comparison, Wisconsin was funded at \$12.13; Iowa was funded at \$10.30; Minnesota was funded at \$9.68; Florida was funded at \$8.58; North Carolina was funded at \$8.01; Tennessee was funded at \$6.73; Oklahoma was funded at \$5.82; Missouri was funded at \$4.61.
- This figure makes up for years of neglect. As stated in the Blue Ribbon Group's June 1, 1999 Final Report, "Supplementing the DPA budget by \$11.7 million will bring Kentucky up to a more comparable position on the national scene, and equip public defenders with the resources they need to provide competent representation."

This is an Investment in the Future

The \$11.7 million increase will be an investment in the future. This will complete the full-time system in Kentucky, and will create a structure for management and supervision for the 21st Century.

New laws involving additional caseload will be able to be absorbed. Judges will have public defenders available in their juvenile, district, and circuit courtrooms. The General Assembly can rest assured that the public defender system is solid and stable, and that any future budget increases will be requested when the caseload increases, not due to the latest crisis in delivery or the latest lawsuit. Employees, particularly

[It] appears elemental that the public interest in the enforcement of criminal laws and the constitutional right of the indigent defendant to counsel can be satisfied only by requiring the state to furnish the indigent a competent attorney whose service does not constitutionally deprive him of his property without just compensation.

Bradshaw v. Ball, Ky., 487 S.W.2d 294 (1972)

attorneys, will be treated fairly rather than their present status as the lowest paid defenders in the nation. And, ultimately, our state, our courts, indigent clients and their families will be better served by a decent and fair public defender and criminal justice system. "

Blue Ribbon Group Funding Recommendations/Initiatives Summary 2000-2002 Biennium

Initiative	Est. Cost FY 01	Est. Cost FY 02	Est. Biennial Cost
Revenue Fund Deficit	\$400,000	\$400,000	\$800,000
Juvenile Enhancement/Completion of Full-Time System			
<ul style="list-style-type: none"> Expansion of full-time system to all counties 	\$1,285,800	1,218,900	\$2,504,700
<ul style="list-style-type: none"> Caseload reduction 	\$1,902,000	\$1,838,800	\$3,740,800
<ul style="list-style-type: none"> Infrastructure expansion 	\$512,600	\$494,600	\$1,007,200
<ul style="list-style-type: none"> Appellate Branch expansion 	\$307,200	\$288,800	\$596,000
<ul style="list-style-type: none"> Conflict Case Rate increased to \$300 per case/Of Counsel Rate increased to \$3,000 per case 	\$294,600	\$294,600	\$589,200
<ul style="list-style-type: none"> Additional Field Office support staff 	\$923,800	\$855,600	\$1,779,400
<ul style="list-style-type: none"> Additional Investigator staff 	\$102,300	\$82,100	\$184,400
<ul style="list-style-type: none"> Law clerks 	\$50,000	\$50,000	\$100,000
Fundamental Fairness for Public Defender Salaries			
<ul style="list-style-type: none"> 30% salary increase 	\$3,247,900	\$3,345,300	\$6,593,200
<ul style="list-style-type: none"> Loan forgiveness program 	\$150,000	\$150,000	\$300,000
Adequate Funding for Capital Defense	\$1,712,300	\$1,619,000	\$3,331,300
Insured Access to Courts for Adults and Juveniles	\$447,200	\$422,500	\$869,700
Equipment Replacement Cycle	\$394,650	\$316,489	\$711,139
TOTALS \$23,107,039	\$11,730,350	\$11,376,689	\$23,107,039

Blue Ribbon Group Supports Counsel for Juveniles

The Children's Law Center of Chase Law School criticized the provision of indigent defense services to Kentucky's children, in a report in December 1995. In response, the Department of Public Advocacy presented Plan 2000 to the 1998 General Assembly. The General Assembly responded, funding 5 additional full-time offices, an assistant juvenile trainer to focus on juvenile training issues, 2 juvenile social workers, 2 juvenile appellate attorneys, and additional juvenile attorneys in existing high caseload offices.

Plan 2000 has been implemented and is working well. Juvenile specialists are present in all of DPA's full-time offices. An assistant juvenile trainer has been hired, and has created an overall plan, called the Gault Initiative, to improve the training of public defenders in the area of juvenile law. Two juvenile appellate lawyers have been hired and are representing children on appellate issues in all of the courts of the Commonwealth. Many of the problems addressed in the Children's Law Center report have been addressed.

Remaining problems with juvenile representation were presented to the Blue Ribbon Group. These problems include:

- A high percentage of juveniles continue to be unrepresented in the courts of the Commonwealth. In the fall of 1998, a survey of children in treatment centers revealed that 12% of the residents did not have an attorney when they were committed to DJJ. This is a problem particularly acute in rural Kentucky. The BRG was presented with a 1999 unpublished Court of Appeals decision, *F.P. v. Commonwealth*, in which the adjudication of a mentally retarded juvenile was overturned due to the inadequacy of his waiver of counsel.
- High caseloads of public defenders remain, particularly in urban areas. In 1997-98, each juvenile defender represented 843 children in Louisville, while the caseload in Lexington was 1198. National standards for juvenile cases have historically been set at 200.

Clearly these caseloads are impossible at this level for thoughtful, thorough representation.

The primary solution to the continued problems with juvenile representation is the completion of the full-time system in the Commonwealth. A fully staffed full-time office covering each county will ensure that defenders will be available in juvenile court. It will be easier for the district judge to have a child discuss possible waiver issues prior to entering a plea without counsel. Reasonable caseloads, of course, will be a must. The implementation of the Gault Initiative, which includes additional training and resources for juvenile defenders, will guarantee that Kentucky's children will be properly represented.

The Blue Ribbon Group was very concerned with this issue. As addressed elsewhere, the BRG affirmed in Recommendation # 3 that "The Full-Time System Should be Completed." In Recommendation #6, the BRG stated that defender caseloads should be lowered to 350 cases per attorney in rural areas and 450 cases in urban areas. Additionally, Recommendation #9, the BRG stated that "It is Important that Public Defender Counsel be Available to Children in Juvenile Court Proceedings."

The BRG Supports Reasonable Funding for Capital Defense

**By Robert W. Carran, Esq.
Taliferro, Mehling, Shiroomi & Carran**

The Kentucky Public Defender System is the lowest funded system in the nation using the two recognized benchmarks, cost-per-case and cost-per-capita. The consultant for the Blue Ribbon Group, the Spangenberg Group, developed the benchmark comparisons. Mr. Spangenberg was careful to make his comparisons using states with and without the death penalty. The reason is simple: when a state has the death penalty, funding problems become greatly exacerbated. This was noted in the 1992 ABA Standards for Criminal Justice Providing Defense Services Third Edition. Standard 5-1.2 reads in part, "Where capital punishment is permitted in the jurisdiction, the plan should take into account the unique and time-consuming demands of appointed representation in capital cases."

At the present time, indigent defense services are provided to capital clients in a variety of ways, and the problems vary depending upon the area.

- 79 counties are covered by a full-time office. However, the typical office is not staffed with a death penalty lawyer. Death penalty cases are handled by attorneys with other responsibilities, including district and circuit court, carrying heavy caseloads in addition to their capital cases. Caseloads in our full-time offices range from 350-650.
- In 41 contract counties, our private-lawyer defenders are neither responsible nor funded for the capital cases arising in their jurisdiction. In those cases, defendants are represented by private lawyers on contract for \$12,500 per lawyer per case, or by the Capital Trial Branch, staffed by 6 lawyers. Codefendants in full-time offices are handled similarly.
- 4 lawyers represent clients on capital appeals.
- 5 lawyers represent clients on capital post-conviction cases.

The situation in Kentucky is not as dire as it is in some states, particularly in the South where indigents charged with capital crimes are being represented by lawyers receiving a maximum of \$1000. However, the resources going to capital defense are not sufficient to fund reasonably the death penalty in Kentucky. DPA proposes the following:

- Two capital trial lawyers in each of the 5 regions of Kentucky in addition to the Capital Trial Branch.
- Two capital appellate and two capital post-conviction lawyers in addition to existing staff.
- Funding to pay \$20,000.00 to private lawyers handling death penalty cases.

This proposal would fund indigent capital defense in Kentucky. The reasonableness of this request is apparent in comparison to what is presently being expended in the federal system to both prosecute and defend capital cases. In a recent study by the Subcommittee on Federal Death Penalty Cases Committee on Defender Services Judicial Conference of the United States, the cost for prosecuting federal death penalty cases was listed as \$365,296 per case; the cost for federal indigent defense was \$269,139. This proposal for a reasonable funding of capital defense in Kentucky compares quite favorably to what is now being spent in the federal system.

The Blue Ribbon Group responded by making Recommendation No. 10: "It is imperative that Kentucky reasonably

fund indigent capital defense both at the trial and post-trial levels."

Members of the Blue Ribbon Group

Co-Chairs:

Michael D. Bowling, Esq.
Wilson, Stanley, Bowling & Constanzo

Robert F. Stephens, Secretary
Kentucky Justice Cabinet

Jeffrey H. Hoover, Representative
Kentucky General Assembly

Joseph E. Lambert, Chief Justice
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